

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KATHERINE GRIMMETT,

Plaintiff,

Case No. 2:11-cv-12623
Hon. Lawrence P. Zatkoff

v.

ANTHEM INSURANCE
COMPANIES, INC., *et al.*,

Defendants.
_____ /

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on June 28, 2012

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Defendants' Motion for Leave to file a Sur-reply to Plaintiff's Newly-Raised Reply Arguments [dkt 24]. The parties have fully briefed the motion. The Court finds that the facts and legal arguments are adequately presented in the parties' papers such that the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. Mich. L.R. 7.1(f)(2), it is hereby ORDERED that the Motion be resolved on the briefs submitted, without oral argument. For the following reasons, Defendants' Motion is GRANTED.

II. ANALYSIS

Pursuant to the Court's Scheduling Order, on January 3, 2012, the parties simultaneously filed their motions for judgment on the administrative record. The parties' motions became fully briefed on February 13, 2012. The parties dispute whether arguments raised in Plaintiff's reply to Defendants' response to Plaintiff's motion for judgment are "new" arguments warranting a sur-reply from Defendants.

The Court finds that, at the very least, Plaintiff has provided new, purported legal authority, and argumentation based on such authority. As such, the Court is well within its discretion to allow Defendant an opportunity to file a sur-reply brief. *See Eng'g. & Mfg. Servs., LLC v. Ashton*, 387 Fed. App'x. 575, 583 (6th Cir. 2010) ("When new submissions and/or arguments are included in a reply brief, a nonmovant's ability to respond to the new evidence has been vitiated . . .") (quoting *Seay v Tennessee Valley Auth.*, 339 F.3d 454, 481-82 (6th Cir. 2003)).

III. CONCLUSION

Accordingly, and for the reasons set forth above, it is HEREBY ORDERED that Defendants' Motion For Leave to File A Sur-Reply [dkt 24] is GRANTED.

IT IS SO ORDERED.

Date: June 28, 2012

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
U.S. DISTRICT JUDGE